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IN THE

Supreme Court of the United States

October Term, 1950

No. 425

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

HIGHLAND PARK MANUFACTURING COMPANY,
Respondent.

SUPPLEMENTAL BRIEF FOR THE CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE*

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The Respondent, Highland Park Manufacturing Company, in its brief submitted to this Court, has attempted to show that the C. I. O. "does exist in very large part for the purpose of dealing with employers." (Resp. Br., p. 14) Principal reliance of the Respondent is on the record in the case of *C. I. O.* v. *McAdory* (325 US 472) and upon one provision in the C. I. O. Constitution. The material thus submitted by the Respondent may seem to contradict the material heretofore submitted by the Congress of Industrial Organizations in its brief as *amicus curiae*, and this supplemental brief is addressed to these apparent conflicts. Examination of the material from which the excerpts were printed by the Respondent demonstrates that there is, in fact, no conflict.

I

It should be stated at the outset that the *McAdory* case was not, as Respondent would seem to indicate, simply a suit brought by the C. I. O. against the Solicitor of Jefferson County, Ala-

bama. The suit was brought by the C. I. O. and by the following organizations, all of whom joined as plaintiffs:

Alabama State Industrial Union Council
United Steelworkers of America
International Union of Mine, Mill and Smelter Workers
Textile Workers Union of America
Local Union 1015 of the United Steelworkers
Local Union 2971 of the United Steelworkers
Local Union 2382 of the United Steelworkers

The complaint distinguishes between the C. I. O. and the unions which were the co-plaintiffs. Paragraph 1 of the complaint describes the C. I. O. It does not allege that the C. I. O. is an organization which exists for the purpose of bargaining collectively but only that the C. I. O. is "a voluntary and unincorporated association composed of numerous voluntary and unincorporated associations or labor unions." (Record, p. 2)

Paragraphs 3, 4, 5, 6, 7 and 8 of the complaint describe the particular unions affiliated with the C. I. O. which joined as complainants. As to those complainants, it is specifically alleged that they have been designated and selected as collective bargaining representatives within the State of Alabama. The paragraphs from the complaint which the Respondent quotes from its brief on page 14 are paragraphs 9 and 10 and they have obvious reference, whenever they state that the complainants are organizations of employees organized for the purpose of engaging in concerted activities, etc., to the complainant unions and not to the complainant C. I. O.

The quotations which the Respondent has reprinted from the testimony of Mr. John Brophy in the *McAdory* case are misleading because they fail to set out the context in which the statements were made. It must be remembered that there was no issue in the *McAdory* case concerning the distinction between the C. I. O. and its affiliated unions. Both the C. I. O. and its affiliated unions were joined together in the suit. Hence, no careful distinction was drawn between the activities of the affiliated unions and the C. I. O. itself, and many times during the course of the testimony questions were asked which obviously referred to the activities of the affiliated unions in terms which, if read out of context, would appear

to indicate that the activities were activities of the C. I. O. Occasionally this failure to advert to the distinction between the C. I. O. and its affiliates is obvious. Thus, on page 82 of the record in the *McAdory* case (quoted in the appendix to the Respondent's brief), the following question was asked:

> "Q. In the collective bargaining between the C. I. O. and the employer, does the C. I. O. make contracts covering merely a plant, or does it make contracts covering all the employees if possible?"

This question would seem to indicate that the C. I. O. and not the affiliated unions made contracts and engaged in collective bargaining. The answer to the question inadvertently shows that the witness was thinking in terms of the unions which are affiliated with the C. I. O. and not the C. I. O.:

> "A. The objective of the C. I. O. National Union is to get a collective bargaining contract with all the employees of a given company or corporation, and whenever possible a contract covering all the workers in a given industry. That is the main objective of the C. I. O. unions in their collective bargaining activities."

Unfortunately, in other sections of the testimony, the distinction between the C. I. O. and its national or international unions was not clearly adverted to since the distinction was not in issue. But the testimony taken as a whole in no way indicates that the C. I. O. conducted collective bargaining or strikes.

Thus the Respondent quotes, on page 20 of his brief, testimony of Mr. Brophy in answer to a question concerning "the policy and custom of the C. I. O. to refuse to handle non-union material." Mr. Brophy's answer to the question did not in itself show that what was referred to were C. I. O. unions, not the C. I. O. itself. Later testimony by Mr. Brophy, however, made it clear that the testimony did not refer to the C. I. O. itself but to some of its affiliated unions.

> "Q. You say it is a prevalent custom and practice of C. I. O. *organizations* to engage in what is known as security boycott?
>
> "A. I don't know that it is a prevalent practice; there are situations where the worker refuses to work on a

certain article or certain product that is being produced under non-union conditions or under strike conditions.

"Q. That is done on a union basis, the union gets together and votes to do that or is instructed by the officers to do that?

"A. Yes, *it is on a union basis.* There may be a provision in the contract which provides that only certain articles manufactured under union conditions will be used in connection with the work of a certain union.

"Q. That is done collectively in many cases?

"A. As a policy, where that is done.

"Q. It is done as a union policy.

"A. Yes.

"Q. And the union policy and practice does include that weapon in certain cases?

"A. Yes. Ordinarily that would take place in the early stage of organization rather than where the union has been fully established or where collective bargaining had become accepted and where working relations were confirmed. It is the exception rather than the rule.

"Q. But it is a definite policy of the union to employ that means where found in the union's judgment necessary?

"A. *Certain unions do that.*

"Q. Certain C. I. O. unions?

"A. Yes, *certain unions may do that.*

"Q. Certain of your unions?

"A. Yes."

(Record p. 129-130, italics added)

Again, the Respondent quotes, on page 20 of his brief, testimony which would seem to indicate that individuals can be members of the C. I. O. directly. The context from which this portion was abstracted, however, shows precisely the contrary:

"Q. Mr. Brophy, of which constituent union of the C. I. O. are you now a member of?

"A. I am a member of the Stone Workers and Allied Activities Union.

"Q. *Is it possible for a member to be a member of C. I. O. and not belong to one of the constituent unions?*

"A. *No.*

"Q. There is no such thing as a member of C. I. O. who is not a member of one of the constituent unions?

"A. He must be a member of a constituent union.

"Q. C. I. O. as such, as distinguished from its constituent unions, then have no members in Alabama?

"A. Yes, in this sense, there are local industrial unions which are chartered by the National C. I. O. directly. A local industrial union is usually a group of workers for which as yet there has been no national union set up. As it were, it is the nucleus for later on to develop the setup of a national union; so they can be members of local unions who are responsible directly to the national C. I. O. office.

"Q. Let me get that clear. You mean the local union is directly responsible to C. I. O. or the individual member is directly responsible to the C. I. O. office?

"A. Well, the local union is chartered by the national C. I. O. office, and the member of the local union is, *his per capita tax is paid direct to the C. I. O. office, just as the per capita tax of another union which is affiliated with C. I. O. pays their tax to the national union.* It is an exception, but it is a continuing exception, due to the state of organization in some new industry.

• • •

"Q. The individual member of that local has his membership in the local?

"A. That is right.

"Q. And the local, in turn, affiliates directly with C. I. O.

"A. That is right.

"Q. And the individual member of the that local is not himself a member of C. I. O.?

"A. Yes; we are all members of C. I. O. It is just in the same sense you may be a citizen of Birmingham and the State of Alabama and a citizen of the United States; so I may be a member of a local union that is affiliated with a National Union that is in its turn affiliated with the C. I. O. We have the over-all membership, as it were, in this fraternity of local and national unions.

"Q. A member of that local we are talking about is a member of the C. I. O. in the same sense as the members of the United Steel Workers?

"A. That is right.

"Q. And no other?

"A. *They assume, the national officers of the C. I. O. assume to the local industrial union the same functions as the officers of the national union have toward a local union.*"

• • •

"Q. So far as you know, no man can be a member of C. I. O. and not be at the same time a member of some other constituent union of the C. I. O.

"A. That is right."

(Record p. 97-99, italics added)

Again, the quotations from the *McAdory* record printed on page 23 of the Respondent's brief would make it appear that the C. I. O. itself conducts bargaining so as to make "the same rates of pay applicable in Alabama as in Pennsylvania." Again, the answers themselves indicate that the testimony concerned the affiliated unions of the C. I. O. and not the C. I. O. itself.

Where the testimony in the case specifically adverted to the distinction between C. I. O. and its constituent unions, the description of functions which we have heretofore submitted to the Court is fully supported. Thus, the Director of the Alabama State Industrial Council, a regional sub-federation, testified as follows:

"Q. You do assist in conducting negotiations for constituent unions?

"A. We do where the International Union or Organization Committee does not have a representative in the State.

"Q. *Ordinarily the International Union assists its locals in negotiations?*

"A. *Almost always.*

"Q. And in the case of the United States Steel Workers, the International is designated for these locals here?

"A. Oh, that is standard policy.

"Q. That is standard C. I. O. policy, your general policy, that is for the National or International Union to be designated agent?

"A. It is in some International Unions, and some of them it isn't.

"Q. Tell us in which that is true?

"A. It is true in the case of the United Steel Workers of America. It is not true in the United Automobile Workers of America so far as Alabama is concerned.

"Q. Have they a local unit here?

"A. They do.

"Q. Do you know about any other constituent union that operates in Alabama?

"A. The United Retail and Wholesale and Department

Store Employees of America—the local unions do their own bargaining.

"Q. How about the Mill, Mine & Smelter Workers?

"A. The Mill, Mine Smelter Workers do, and I believe the contract in several instances with them designates the local union as the bargaining agent.

"Q. They have held several elections in Alabama?

"A. They have.

"Q. What went on the ticket in the National Labor Relations Board election, was it the local union or the National Union, to be voted on?

"A. Not being present at the time, I don't know."

(Record P. 163-164, italics added)

As to strikes, the same witness testified:

"Q. Dealing with those strikes is *aprt* (sic) of your activities, is it not?

"A. Not unless I am requested by the representative of the International Union.

"Q. *The International Union.* Is it part of the activities in the State to deal with those strikes?

"A. *It attempts to enforce its contract and constitution and assume its responsibilities.*

"Q. *That is part, to deal with strikes?*

"A. *It is.*

"Q. *And stoppage of work where there is a strike or not?*

"A. *Yes.*

"Q. And are some representative sent into Alabama?

"A. A great majority of the International representatives are natives of Alabama.

"Q. They are paid by the National or International Unions?

"A. Most of them.

"Q. Just as you are paid by the C. I. O.?

"A. Yes."

(Record P. 166, italics added)

"Q. . . . Do you know of any local industrial union in Alabama that is not affiliated with any national union?

"A. I do.

"Q. Could you name that for us?

"A. There is one at Mobile, Alabama, the United Harbor Craft Workers. It was chartered directly by the national office of the C. I. O.

"Q. Do you know of any other?

"A. There is one but it isn't functioning.

Recross examination.

By Mr. Simpson:

"Q. The United Harbor Workers at Mobile are an autonomous union with two locals, is that what that is?

"A. They are.

"Q. And if they were organized in two locals down there, you would then have two local units both in the State of Alabama, wouldn't you?

"A. We would.

"Q. Suppose they have units, say at Pensacola, would they be affiliated with them?

"A. Not as a local industrial union; they are separate until there are enough local unions to create an international union.

"Q. That is the beginning of an international union?

"A. It is; we hope.

"Q. As such the National C. I. O. organization extends it a charter of affiliation?

"A. A charter and certificate of affiliation.

"Q. And it is allowed to affiliate just as though it were as big as the biggest union in the country that desired to affiliate with C. I. O.?

"A. Yes, sir.

"Q. It is affiliated on the same basis as the United Steel Workers?

"A. It is, except membership.

"Q. Except for size; its relation to C. I. O. is the same as all other constituent unions, except for size?

"A. It is, except for size.

"Q. Then there isn't a person in the United States who is a member of C. I. O. who isn't first a member of an affiliated union?

"A. That is right."

(Record P. 170-171)

II

The Respondent's failure to give fully to the Court the testimony in the *McAdory* case is paralleled by its quotations from the C. I. O. Constitution. On page 26 of its brief the Respondent quotes Article II of the C. I. O. Constitution in such a way as to distort its provisions. A part of the quotation is printed below along with words which were omitted by the Respondent. The words which were omitted are printed in italics:

"The objects of the organization are:

"*First.* To bring about the effective organization of the working men and women of America . . . *and to unite them for common action into labor unions for their mutual aid and protection.*

"*Second.* To extend the benefits of collective bargaining . . . *by forming labor unions capable of dealing with modern aggregates of industry and finance.*"

The italicized portions which were omitted by the Respondent make it clear that the objects of the C. I. O. were to be accomplished, and in fact have been accomplished, by aiding employees to organize and create unions which would themselves extend the benefits of collective bargaining and perform similar functions for their membership.

III

The material submitted by the Respondent does emphasize one minor aspect of the C. I. O.'s activities which were, perhaps, not sufficiently spelled out in our first brief. In our brief, we stated, at page 14, that "The sub-federations exist to provide such aid to their affiliated local unions as those local unions may request. . . ." In stating elsewhere that the C. I. O. does not engage in collective bargaining, we did not mean to exclude assistance in collective bargaining from the scope of the assistance which the C. I. O. local and regional sub-federations and officers may provide, on request, to local unions.

Normally, as we stated in our brief, the C. I. O. does not participate, even to provide technical assistance, in the collective bargaining of its affiliated internationals and their locals. There are occasions, however, when local unions cannot, for one reason or another, obtain the assistance of their internationals on matters which come up in the course of the collective bargaining relationships. They may need certain technical information, or legal advice, or the aid of a negotiator and, if the local is an isolated one, the international may not have a representative in the area. In such circumstances, the regional directors of the C. I. O. or the officers of the local or regional sub-federations within the C. I. O. may, at the re-

quest of the international, supply the necessary assistance. This does not mean that the C. I. O. controls the collective bargaining. It only means that C. I. O. representatives provide technical assistance because the international is unable to do so because it does not have a representative in the area. As the testimony in the *McAdory* case shows, such cases usually arise where the locals rather than the internationals do the collective bargaining and in the exceptional case where requests for assistance by the local cannot be satisfied by the international because of the absence of a representative of the international in the area.

The fact that such assistance is occasionally rendered to isolated local unions does not in any way undercut the general propositions which we have heretofore presented to the Court that the C. I. O., as opposed to the international unions and their locals, does not itself control collective bargaining or strikes. When local officers of the C. I. O. do provide technical assistance to local unions they do so at the request of the unions and as a service to those unions, not as the directors or the formulators of collective bargaining policy. They act, in short, in the same capacity as lawyers or other professional men who may be called in by a client to provide technical assistance for the client. The client in such cases is the local union. The union controls what proposals shall be made, what proposals shall be accepted, whether a strike shall be called, etc. The union, in short, is the collective bargaining agency—to which the C. I. O., in a few cases, may provide technical assistance.

Respectfully submitted,

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